IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 8TH JANUARY 2007 / 18TH PAUSHA 1928

Crl.MC.No. 4029 of 2006()

IN CRIME NO.359/2006 OF THE HARBOUR POLICE, W/ISLAND, COCHIN-3 ON THE FILE OF THE HON'BLE JUDICIAL IST CLASS MAGISTRATE COURT- I ERNAKULAM

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PETITIONER: ACCUSED

CAPT.MUHAMMAD ANISUR RAHMAN KHAN,
S/O.M.D.ABDUL KASHEM, AGED 30 YEARS,
BANGLADESH NATIONAL NOW WORKING AS THE MASTER
(CAPTAIN) OF THE VESSEL `MV BANGLAR GOURAB',
HOLDER OF PASSPORT NO.V0069183 ISSUED AT DHAKA
BANGLADESH, NOW AT OUTER ANCHORAGE,PORT OF COCHIN.

BY ADV. SRI.V.J.MATHEW
SRI.P.P.RAJESH
SRI.BIJISH B.TOM
SMT.ASHA ASOKAN

RESPONDENTS:

STATE OF KERALA,
REP. BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 08/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.4029 of 2006

Dated this the 8th day of January, 2007

ORDER

The petitioner is the Master of a Vessel `MV BANGLAR GOURAB'. The Vessel was anchored in the Cochin Port. Cargo in the said Vessel was being transferred to another Vessel. Discharge of the cargo commenced on 28.10.l2006. On 10.11.2006, an unfortunate accident took place while the ship's crane/Derrick No.6 was being operated. Sacks of rice was the consignment. While they were being discharged to the neighbouring Vessel, the sling and rope of the said crane/Derrick gave way and the deceased one Sebastian who was on board was hit on the head leading to his instantaneous death. A crime was registered and the police conducted the investigation. At the end of the investigation, final report has been filed alleging commission of the offence punishable under Section 304 A I.P.C by the petitioner, the Master of the ship.

2. The petitioner has come to this Court with this petition under Section 482 Cr.P.C praying that the extraordinary inherent jurisdiction available to this Court under Section 482 Cr.P.C may be invoked to prematurely terminate the proceedings initiated against him. The learned counsel for the petitioner submits that the allegations, even if accepted in toto, do not at all reveal any culpable

negligence on the part of the petitioner. The prosecution of the petitioner under Section 304 A I.P.C is bad and totally unsustainable in the circumstances. The petitioner did not allegedly have any direct involvement in the discharge of the cargo or the operation of the derrick. Except that he was the Master of the ship, no allegations whatsoever of any act of omission or commission is attributed to him at all. In these circumstances the proceedings against him may be quashed. Continuation of the proceedings against the petitioner works out untold hardship and misery to the petitioner obliging the petitioner to stay back even when this Vessel has been given the requisite clearance by all authorities to leave the Port. Proceedings may in these circumstances be quashed, it is prayed.

3. The learned Public Prosecutor was requested to make his submissions. The case diary has been placed before me for my perusal. I shall not refer to unnecessary details. After going through the case diary in its entirety, I find the only allegation that is raised against the petitioner is that the ship, of which he was the Master, was an old one. Thus there is significantly no specific allegation whatsoever raised against the petitioner. The learned Public Prosecutor was requested to point out whether there is any allegation of any overt act or covert omission on the part of the petitioner identified by the Investigator to justify raising of an allegation under

Section 304 A I.P.C against the petitioner. Significantly the learned P.P fairly submits that there is no other allegations whatsoever raised against the petitioner except that the ship of which he is the Master is an old one.

4. I take note that there is no specific allegation that the petitioner did do or did not do anything which he was expected not to do or to do culpable negligence is the gross breach of a duty to take care which is expected of a reasonably prudent person in the given circumstances. Rashness is the culpable disregard of the consequences which the doer of the act is aware of and which he allegedly and carelessly ignores in the performance of the act. Except that the ship was old, there is no allegation whatsoever against the petitioner. Significantly there is no allegation that any specific act of inspection/maintenance/repair had not been attended to by the petitioner. There is no allegation that periodical maintenance and repairs and certification of sea worthiness by the authorities which the petitioner was expected to perform had not been performed by him. Case diary clearly reveals that the operation of the crane/derrick was done by others and the petitioner had no specific act or role while the cargo was discharged using the crane in question. Of course, the learned counsel for the petitioner relies on Annexure-A3 letter admittedly issued by the petitioner acknowledged by CW4 in which he

had given specific instructions about the manner in which the cargo was to be discharged and the cranes/Derricks operated. Annexure-A4 shows that a letter of protest was issued by the petitioner to the persons responsible for operating the crane, that is the stevedores working on board the ship. Annexure-A4 also reveals that such a letter of protest was given by the petitioner. According to me, it is unnecessary to go into those details. The petitioner has a case that the deceased was unauthorisedly entered the ship and that the Ship's Derrick/crane was operated by the Stevedores/their employees in a rash and negligent manner ignoring the instructions and protests of the petitioner. Suffice it to say, at the risk of repetition that except the allegation that the ship was old, no specific allegation whatsoever is raised against the petitioner regarding his role in the accident which had unfortunately taken place.

5. I am, in these circumstances, satisfied that this is a fit case where the powers under Section 482 Cr.P.C can and deserve to be invoked in favour of the petitioner. Such powers, it is of course trite, are to be invoked sparingly and in exceptional cases in aid of justice. The possible adverse consequences which might visit the petitioner if he were compelled to remain here till the completion of the proceedings against him in the ordinary course does also weigh with me in choosing to invoke the powers under Section 482 Cr.P.C.

6. The distinction between the concepts of actionable civil negligence and culpable criminal negligence which alone can attract the consequences under Section 304 I.P.C, must also be alertly borne in mind. The liability of the Master/owner of the ship for civil negligence need not be adjudicated in this proceedings. At the appropriate stage and the appropriate forum, may be called upon to decide that question. I am satisfied that sufficient materials to justify an indictment under Section 304 A I.P.C have not been collected and placed before the learned Magistrate to justify issue of process under Section 304 A I.P.C against the petitioner. It follows from the above discussions that the proceedings against the petitioner is liable to be quashed.

7. In the result, this Crl.M.C is allowed. All further proceedings initiated against the petitioner before the learned Judicial Magistrate of the First Class-I, Ernakulam as C.C.No.4924 of 2006 filed on the basis of the final report in Crime No.359 of 2006 by the Harbour Police, Wellingdon Island, Kochi-3 is hereby quashed. Needless to say, the passport of the petitioner shall be released to him and he shall be permitted to leave India.

Hand over a copy of this order to the learned counsel for the petitioner today itself.

(R.BASANT, JUDGE)

rtr/-